

GAHC010166582018



2019:GAU-AS:20839

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7686/2018

M/S. AGLOWMED LTD.

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 (READ WITH THE COMPANIES ACT 2013) HAVING ITS PLACE OF BUSINESS AT A.K. AZAD ROAD, REHABARI, GUWAHATI, ASSAM, REP. BY SHRI GOPAL KUMAR PRASAD.

VERSUS

THE STATE OF ASSAM AND 4 ORS.

REP. BY THE COMMISSIONER AND SECRETARY, TO THE GOVT. OF ASSAM, DEPARTMENT OF FINANCE AND TAXATION, DISPUR, ASSAM, GUWAHATI - 781006.

2:THE COMMISSIONER OF STATE TAX
(EARLIER COMMISSIONER OF TAXES)

ASSAM KAR BHAVAN

DISPUR
GUWAHATI- 781006.

3:THE JOINT COMMISSIONER OF STATE TAX
(EARLIER JOINT COMMISSIONER OF TAXES)
ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM-05.

4:THE SUPERINTENDENT OF STATE TAX
(EARLIER SUPERINTENDENT OF TAXES)

UNIT -D)
KAR BHAWAN
DISPUR
GUWAHATI-05.

5:THE STATE BANK OF INDIA

A.T. ROAD
BRANCH
GUWAHATI
ASSAM-01

Advocate for the Petitioner : MS. M L GOPE, MS. N HAWELIA,MS. N GOGOI,MS. N MECH

Advocate for the Respondent : SC, FINANCE AND TAXATION, MS B GOGOI

Linked Case : WP(C)/6728/2018

M/S. AGLOWMED LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT
1956 HAVING ITS PLACE OF BUSINESS AT A K AZAD ROAD
REHABARI
GUWAHATI
ASSAM
REP. BY SRI GOPAL KUMAR PRASAD

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
DEPT OF FINANCE AND TAXATION
DISPUR
ASSAM
GUWAHATI- 781006

2:THE COMMISSIONER OF STATE TAX (EARLIER COMMISSIONER OF
TAXES)
ASSAM KAR BHAVAN
DISPUR
GUWAHATI- 781006

3:THE JOINT COMMISSIONER OF STATE TAX (EARLIER JOINT
COMMISSIONER OF TAXES)

ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM

4:THE SUPERINTENDENT OF STATE TAX (EARLIER SUPERINTENDENT OF
TAXES)

UNIT D
KAR BHAWAN
DISPUR
GUWAHATI

5:THE STATE BANK OF INDIA

A T ROAD BRANCH
GUWAHATI
ASSAM

Advocate for : MS. M L GOPE

Advocate for : SC

TAXES appearing for THE STATE OF ASSAM AND 5 ORS

Linked Case : WP(C)/7582/2018

M/S. AGLOWMED LTD.

A COMPANY INCORPORATED UNDER THE PROVISIONS OF COMPANIES
ACT

1956 (READ WITH THE COMPANIES ACT
2013) HAVING ITS PLACE OF BUSINESS AT A.K. AZAD ROAD
REHABARI
GUWAHATI
ASSAM REPRESENTED BY SRI GOPAL KUMAR PRASAD.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
DEPTT. OF FINANCE AND TAXATION
DISPUR
GUWAHATI- 781006.

2:THE COMMISSIONER OF SALES TAX (EARLIER COMMISSIONER OF TAXES)

ASSAM KAR BHAVAN
DISPUR
GUWAHATI- 781006.

3:THE JOINT COMMISSIONER OF STATE TAX (EARLIER JOINT COMMISSIONER OF TAXES)

ASSAM
GUWAHATI
KAR BHAWAN
GUWAHATI
ASSAM.

4:THE SUPERINTENDENT OF STATE TAX (EARLIER SUPERINTENDENT OF TAXES)

UNIT-D
KAR BHAWAN
DISPUR
GUWAHATI.

5:THE STATE BANK OF INDIA
A.T. ROAD BRANCH
GUWAHATI
ASSAM.

Advocate for : MS. M L GOPE

Advocate for : SC

FINANCE AND TAXATION appearing for THE STATE OF ASSAM AND 5 ORS.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. N. Hawelia, Advocate

For the Respondent(s) : Mr. M. Bhuiyan, Advocate

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **24.02.2026**

Whether the pronouncement is of the

Operative part of the judgment? : **NA**

Whether the full judgment has been pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Ms. N. Hawelia, the learned counsel appearing on behalf of the petitioner in the 3 (three) writ petitions. Mr. M. Bhuiyan, the learned counsel appears on behalf of the State respondents in the 3 (three) writ petitions.

BRIEF FACTS

2. The petitioner in all 3 (three) writ petitions is one and the same. The petitioner is a company incorporated under the provisions of the Companies Act, 1956, and is a registered dealer under the Assam Value Added Tax Act, 2003 (for short, "the Act of 2003"), as well as the Central Sales Tax Act, 1956. The petitioner is also a registered dealer under the Goods and Service Tax Act, 2017.

3. The petitioner deals in the sale of medicines in the State of Assam. It is the case of the petitioner that while selling medicines in the State of Assam, the petitioner also distributed free supplies as samples to the retailers as a policy of promotion of medicines. It is the case of the petitioner that for all the 3 (three) assessment years i.e. 2007-2008, 2008-2009, and 2009-2010, the Superintendent of Taxes,

Unit-D, Guwahati accepted that the free supplies of medicines which the petitioner distributed amongst the retailers were exempted from payment of tax and accordingly passed assessment orders.

4. The grievance of the petitioner herein is that the respondent No. 4, i.e. the Superintendent of Taxes, Unit-D, Guwahati, initiated the proceedings for re-assessment under Section 40 of the Act of 2003 for all the 3 (three) assessment years, and thereupon passed re-assessment orders thereby levying tax on the free samples and also the interest accrued thereon. It is pertinent to mention that in respect to the 3 (three) assessment years, the following amounts were found payable by the petitioner upon passing re-assessment orders:

1. 2007-2008- Tax-Rs. 6,74,258/-; Interest-Rs. 9,30,476/-.
2. 2008-2009- Tax-Rs. 7,91,729/-; Interest-Rs. 9,50,075/-
3. 2009-2010- Tax-Rs. 7,94,685/-; Interest-Rs.8,10,578/-

5. The petitioner being aggrieved by the re-assessment orders so passed by the respondent No. 4 for the 3 (three) assessment years, thereby imposing a huge tax liability as well as the interest thereupon, preferred 3 (three) revision applications before the Commissioner of Taxes, Guwahati and the same was endorsed to the Joint Commissioner of Taxes, Guwahati for disposal. The Joint Commissioner of Taxes, Guwahati vide the common order dated

10.05.2018 dismissed the 3 (three) revision applications thereby upholding the orders of re-assessment for the 3 (three) assessment years and it is under such circumstances, the present writ petitions have been filed.

6. The record reveals that this Court vide an order dated 09.11.2018 issued notice. However, no interim orders were passed.

7. Ms. N. Hawelia, the learned counsel appearing on behalf of the petitioner submitted that as there was no interim order passed, the petitioner had already paid the entire tax as well as the interest payable thereon.

8. It is also very pertinent to take note of that as the order dated 10.05.2018 passed by the respondent No. 3, is based upon a Notification issued by the Government of Assam dated 11.10.2006, the said Notification has also been put to challenge in the 3 (three) writ petitions.

9. The respondents have filed an affidavit-in-opposition wherein it was stated that the assessments initially carried out by the petitioners were self-assessments. It was also stated that the petitioner had claimed to have provided large quantities of medicine free of cost to the retailers in the form of quantity discount as a common practice of business, whose value runs into crores of rupees in a financial year.

These samples were actually not free samples. It was also mentioned that the petitioner was afforded adequate opportunities before completion of the proceedings in the matter of turnover escaping the assessment, but the petitioner did not even bother to produce the books of account, nor to speak about adducing its case. It was stated that going through the returns submitted of the audited accounts of the petitioner, it transpired that the petitioner paid taxes by multiplying the aggregate of MRP as declared in his returns. The petitioner did not deduct the tax fraction from the MRP, which implied that the petitioner threw open to the market its product with a clear instruction that ultimately the customers have to bear the extra tax in addition to the MRP printed on the body of the package and those goods which were given free as quantity discount or whatever name it may be, ultimately is sold to the public along with other goods.

10. It was also mentioned in the said affidavit-in-opposition that in view of such practices being followed of providing free samples, the Government of Assam in exercise of the powers conferred by Section 110 of the Act of 2003, issued the Notification dated 11.10.2006 directing that free supplies along with the sale at the point of first sale in the State on MRP also be deemed as sale and shall be liable to pay tax on the MRP of such goods given free. Accordingly, proceedings under Section 40 of the Act of 2003, were conducted strictly confirming to the provisions of law and the relevant Notification issued

under the Act of 2003. The proceedings were concluded way back on 24.09.2015 and the demand notice thereof was issued and received on the same date.

11. It was further mentioned in the said affidavit-in-opposition that the petitioner never bothered to pay slight importance to it and sat over it. Resultantly, recovery proceedings were initiated, but the petitioner exhibited total disregard to those proceedings also, and the Petitioner woke up after the recovery proceedings took effective turn. It was also mentioned that Section 10 of the Act of 2003 provides the method of levy of tax on medicine to be taxed at the first point on MRP, and the petitioner never contested that point. The petitioner all along till Drugs and Medicines were brought in the Schedule-II continued to pay tax on MRP. The levy of tax later on changed and the tax was levied at all points of sale where even if goods are given free to retailer, tax is to be deposited by the retailer if the retailer sold it to the customer. It was also mentioned that the petitioner followed the earlier system without contesting its validity and ripped all the benefits of that system and pumped goods into the market amounting to crores of rupees with a label on it "Local Taxes Extra". It was stated that the petitioner knew that though the goods at the first stage were supplied free of cost to the retailers as promotional measure, the goods would be sold by the subsequent seller as the goods were inscripted with "Local Taxes Extra", as evident from the Petitioner's

accounts, thereby burdening the customers to pay tax, and thus the petitioner cannot avoid the responsibility of the tax burden by accepting a part of the scheme and avoiding the other part after invoking the path of professing the dictum "Local Taxes Extra". The respondents through the affidavit supported the impugned order dated 10.05.2018 as well as the Notification, which was impugned in the instant proceedings.

**SUBMISSIONS MADE BY THE LEARNED COUNSELS
APPEARING ON BEHALF OF THE PARTIES**

12. Ms. N. Hawelia, the learned counsel appearing on behalf of the petitioner referred to the judgment of the Supreme Court in the case of ***State of Rajasthan & Another Vs. Rajasthan Chemist Association*** reported in ***(2006) 6 SCC 773*** and submitted that the imposition of the tax on the MRP was not permissible and therefore the impugned Notification dated 11.10.2006 cannot be sustained in law. The learned counsel, further referring to Section 11 of the Act of 2003, submitted that for the purposes of the Act of 2003, the taxable turnover in relation to a dealer liable to pay tax on the sale of goods means that part of the dealer's gross turnover during the prescribed period which remains after deducting the permissible deductions mentioned in Section 11 of the Act of 2003, and includes the turnover of such other

sales or such other amounts as may be prescribed. The learned counsel, referring to Rule 9 of the Assam Value Added Tax Rules, 2005 (for short, "the Rules of 2005") submitted that in determining the taxable turnover as per the provisions of Section 11 of the Act of 2003, the various amounts specified in Clauses **(a) to (h)** of Rule 9 of the Rules of 2005 are required to be deducted which includes amounts allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or in accordance with the terms of any contract or agreement entered into in a particular case having a bearing on the price consideration, and provided further that the accounts show that the purchaser has paid only the sum originally charged less the discount.

13. The learned counsel for the petitioner submitted that the free sample provided by the petitioner was intact a discount, and as such, the price of the free samples had to be excluded while determining the taxable turnover. In that regard, the learned counsel referred to the judgment of the Supreme Court in the case of ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. M/s Motor Industries Co., Ernakulam*** reported in ***(1983) 2 SCC 108***. The learned counsel referring to the said judgment submitted, that the Supreme Court categorically observed that the service discount is an integral part of the transaction of sale itself which incidentally confers on the assessee the benefit of

popularization of the assessee is goods in the market. The discount so allowed is merely a percentage of the price of the goods sold, which has nothing to do with any other goods supplied or other sub-service rendered by the buyers to the assessee. The learned counsel appearing on behalf of the petitioner therefore submitted that the free samples were provided in lieu of a trade discount, and as such, the same should be construed as a part of a trade discount, thereby entitling the said amount to be deducted while determining the taxable turnover.

14. Per contra, Mr. M. Bhuiyan, the learned counsel appearing on behalf of the State respondents submitted that drugs and medicines were brought within the fold of the Fourth Schedule of the Act of 2003. Explanation 3 to Section 10 of the Act of 2003 makes it clear that when goods are brought within the fold of Fourth Schedule, tax at the first point of sale has to be paid on the MRP. The learned counsel submitted that neither Explanation 3 to Section 10 of the Act of 2003 nor Entry 21 of the Fourth Schedule have been put to challenge. The learned counsel therefore submitted that under such circumstances, the petitioner cannot be allowed to question the mandate of the Explanation 3 to Section 10 of the Act of 2003, as well as Entry 21 to the Fourth Schedule.

15. The learned counsel for the respondents submitted that the

Notification which was issued on 11.10.2006 and impugned in the instant proceedings, is more like a clarificatory Notification which have been issued to obviate the difficulties arising on account of the common practice followed in the medicine trade to offer free units on sale, which results, not only in the loss to the State Exchequer, but also permits the retailers to collect tax on sale on such free units. The learned counsel therefore submitted that without the challenge to Explanation 3 to Section 10 of the Act of 2003 as well as Entry 21 of the Fourth Schedule, the Notification dated 11.10.2006 being a part of the said provisions cannot be put to challenge. The learned counsel further submitted that the judgment in the case of ***Rajasthan Chemist Association (supra)*** cannot be made applicable to the present dispute as the facts involved in the said judgment are completely different from the facts involved in the present proceedings.

16. The learned counsel for the respondents submitted that Section 11 of the Act of 2003 stipulates the permissible deductions while determining the taxable turnover and further, at Clause (d) of Section 11 of the Act of 2003, it stipulates that permissible deductions would be available in the Rules of 2005. The learned counsel submitted that Rule 9 of the Rules of 2005 provides the permissible deductions. Referring to Rule 9(b) of the Rules of 2005, the learned counsel submitted that for getting the benefit under the said Rule, there are certain prerequisites to be satisfied, which includes that the amount

allowed is as a discount and not as a free sample. Secondly, such amounts allowed as discount is in accordance with the regular practice of the dealer or in accordance with the terms of any contract or agreement entered into in a particular case having a bearing on the price consideration, provided the accounts show that the purchaser has paid only the sum originally charged less discount. The learned counsel further submitted that when it is a case of free samples, the said samples are not accounted for, and accordingly Rule 9(b) of the Rule of 2005 cannot be said to be satisfied in the present case.

ANALYSIS AND DETERMINATION

17. At the outset, it is relevant to observe that the impugned order dated 10.05.2018 is based upon the impugned notification dated 11.10.2006 and as such, it is only in the circumstance, this Court holds that the impugned Notification is contrary to law, the impugned order can be interfered with.

18. The impugned Notification is challenged on the ground that it is contrary to the judgment of the Supreme Court in ***Rajasthan Chemist Association (supra)***. In the opinion of this Court, the judgment in the case of ***Rajasthan Chemist Association (supra)*** is not applicable. The reasons are that the issue involved in the case of ***Rajasthan Chemist Association (supra)*** was whether the taxable turnover of the wholesale distributor is to be calculated on the basis of the maximum

retail price or on the basis of the price at which the wholesaler had sold the medicines to the retailers. The issues, as to whether free samples are permissible deductions in terms with Section 11 of the Act of 2003 for determination of the taxable turnover is not an issue involved in the judgment of the Supreme Court in the case of ***Rajasthan Chemist Association (supra)***.

19. Apart from the above, it is also very pertinent to take note of that in the case before the Supreme Court in the case of ***Rajasthan Chemist Association (supra)***, Section 4A of the Rajasthan Sales Tax Act, 1994, was put to challenge, whereas in the instant case, neither Explanation 3 to Section 10 of the Act of 2003 nor Entry 21 of the Fourth Schedule of the Act of 2003 have been put to challenge.

20. Under such circumstances, as neither there is challenge to the vires of Explanation 3 to Section 10 nor Entry 21 of Fourth Schedule to the Act of 2003, the question of challenging the impugned Notification dated 11.10.2006 on the ground that the Supreme Court in the case of ***Rajasthan Chemist Association (supra)*** held that there cannot be charging of tax on the MRP is completely misconceived. It is apposite herein to mention that both Section 11 of the Act of 2003 as well as Rule 9 of the Rules of 2005 provide permissible deductions which includes trade discounts which was not an aspect before the Supreme Court.

21. Let this Court now take into consideration whether free samples can be regarded as trade discounts. This aspect is taken into consideration in view of the submission made by the learned counsel appearing on behalf of the petitioner to the effect that free samples being a form of a trade discount, the petitioner is entitled to the benefit in terms with Rule 9(b) of the Rules of 2005 while determination of the taxable turnover in terms with Section 11 of the Act of 2003 and as such, the impugned Notification dated 11.10.2006 is contrary to Section 11 of the Act of 2003 read with Rule 9(b) of the Rules of 2005.

22. This Court finds it very pertinent to take note of that Rule 9(b) of the Rules of 2005 is almost *pari materia* to Rule (9)(a) of the Kerala General Sales Tax Rules, 1963. The said Rule 9(a) of the Kerala General State Tax Rules, 1963 came up for interpretation before the Supreme Court in the case of ***M/s Motor Industries Co., Ernakulam (Supra)***. A perusal of paragraph No. 5 of the said judgment would show that the Supreme Court observed that all amounts allowed in discount where such discount is allowed in accordance with the regular practice of the dealer or in accordance with the terms of the contract or agreement entered into in a particular case have to be deducted from the total turnover in determining the taxable turnover, provided the accounts of the assessee show that the purchaser has paid only the sum originally charged less the discount. It is further

seen that in the said case trade discounts were allowed and such discounts were also shown in the books of accounts. Paragraph Nos. 5 and 6 of the said judgment being relevant are reproduced herein under:

“5. We shall first deal with the claim made in respect of “service discount”. Under clause (a) of Rule 9 of the Rules all amounts allowed as discount where such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of contract or agreement entered into in a particular case have to be deducted from the total turnover in determining the taxable turnover provided the accounts of the assessee show that the purchaser has paid only the sum originally charged less the discount. In the instant case the “service discount” in respect of which the deduction was claimed by the assessee was the additional trade discount allowed by it to its main distributors (purchasers) namely the T.V. S. group of companies which constitute a prestigious group of commercial concerns over and above the normal trade discount in consideration of the extra benefit derived by the assessee by reason of the marketing of its goods through them. This additional trade discount is allowed in accordance with the trade agreement subject to periodical variation depending upon the cost structure and changes in market conditions. It is not disputed that there were such agreements between the assessee and the purchasers and the accounts of the assessee truly reflected the actual discount allowed to the purchasers. What is however urged by the Department is that the said additional discount allowed by the assessee could not strictly be termed as discount as it was in lieu of services rendered by its main distributors by way of popularisation of the sales and consumption of the products sold by the assessee. We find it difficult to accept the submission made on behalf of the Department. Rule 9(a) says that all amounts allowed as discount either in accordance with regular practice or in accordance with agreement would be deductible from the total turnover provided they are duly supported by the entries in the accounts of the assessee. Ordinarily any concession shown in the price of goods for any commercial reason would be a trade

discount which can legitimately be claimed as a deduction under clause (a) of Rule 9 of the Rules. Such a concession is usually allowed by a manufacturer or a wholesale dealer in favour of another dealer with the object of improving prospects of his own business. It is common experience that when goods are marketed through reputed companies, firms or other individual dealers the demand for such goods increases and correspondingly the business of the manufacturer or the wholesaler would become more and more prosperous and its capacity to withstand competition from other manufacturers or other dealers dealing in similar goods would also improve. Hence any concession in price shown in such circumstances by way of an additional incentive with a view to promote one's own trade does qualify for deduction as a trade discount. It cannot be termed as a service charge as is attempted to be termed in this case. In fact in this case apart from buying the products of the assessee, no other service is being rendered by the T.V.S. group of companies to the assessee. In the circumstances the additional discount or "service discount" as it is called in this case is no other than the discount referred to in Rule 9(a) of the Rules.

6. *We are not inclined to accept the submission that the "service discount" in question is in the nature of a set-off on account of reciprocal promises or amounts to consideration for an agreement styled as "trading-in". "Trade-in" contracts are those where goods are transferred by the seller for consideration partly in money and partly in exchange of some other goods to be sold by the buyer to the seller. In such cases there may be one contract of sale only of the principal goods coupled with a subsidiary agreement that if the buyer delivers to the seller the other goods, an agreed allowance will be made. There may also be cases where the buyer may become entitled to an extra allowance for some service unconnected with the sale of the goods in question being rendered to the seller. In such cases the allowance in the price of the goods sold given by the seller to the buyer either by way of consideration for the goods supplied by the buyer to the seller or for services rendered by the buyer to the seller would not be a trade discount as such which would qualify for deduction in the determination of the taxable turnover. In the instant case the service said to have been rendered by the buyers for securing the "service discount" is an integral part of the transaction of sale*

itself which incidentally confers on the assessee the benefit of popularisation of the assessee's goods in the market. The discount so allowed is merely a percentage of the price of the goods sold which has nothing to do with any other goods supplied or other service rendered by the buyers to the assessee. The fact that the discount is not allowed at the time of sale but on a later date at the end of the month would not make it any-the-less a trade discount."

23. From the above quoted paragraphs of the said judgment, it is clear that the Supreme Court was dealing with a case of trade discount and not free samples.

The question therefore arises as to whether free samples can be equated to trade discounts for allowing deduction on the taxable turnover in terms with Rule 9(b) of the Rules of 2005.

24. This Court finds it relevant to take note of the concept of free samples vis-à-vis trade discount. A free sample is a sample of an offered product that is given to existing or potential customers for promotional purposes and is not charged to the customers. Such free samples are usually given out to promote the product's quality, promote the brand or market a new product. In effect, a free sample is a sample which is provided to the end customer free of cost for promotion of the product. On the other hand, a trade discount is a percentage reduction from the listed price, given to the intermediaries (wholesalers/retailers) for bulk purchase thereby reducing the invoice value. In that perspective, if this Court takes note of Rule 9(b) of the

Rules of 2005, it would show that it refers to trade discount but not free samples. This Court therefore is of the opinion that Rule 9(b) of the Rules of 2005 only refers to trade discount and not to free samples.

25. This Court now finds it very pertinent to take note of the rationale behind the Notification dated 11.10.2006 which is impugned in the instant proceedings. The contents of the Notification itself show that there is a common practice in the medicine trade to offer free units on sale, but these free units which have been provided to the retailers are sold by the retailers to the consumers at the M.R.P. and tax is charged above the M.R.P. This aspect is apparent from the materials on record that these free samples so provided not only mentions the MRP, but also mentions "Local Taxes Extra", thereby permitting the retailers to collect tax from the consumers but such tax collected do not make its way to the State Exchequer. It is under such circumstances, vide the impugned Notification dated 11.10.2006, it was clarified that the free samples along with the sale at the point of first sale in the State on MRP basis shall also be deemed to be sale of such goods, and the dealer providing such free samples at the point of first sale in the State shall calculate and pay tax on the MRP of such goods given free. Taking into account the said Notification dated 11.10.2006, it cannot therefore be said that the impugned Notification is contrary to Rule 9(b) of the Rules of 2005 inasmuch as Rule 9(b) of

the Rules of 2005 only refers to trade discount.

26. This Court also finds it very pertinent to take note of that the various assessment years are the subject matter of dispute in the 3 (three) writ petitions are 2007-2008, 2008-2009 and 2009-2010 and the petitioner being in the trade of medicine ought to have known about the Notification dated 11.10.2006 which was holding the field at least till 31.10.2009. The petitioner never challenged the said notification till filing of the present proceedings in the year 2018. Under such circumstances also, the impugned notification cannot be interfered with.

27. The notification dated 11.10.2006 in view of the above analysis cannot be said to be contrary to Section 11 of the Act of 2003 and Rule 9(b) of the Rules of 2005.

28. It is pertinent to observe that the impugned order dated 10.05.2018 is based upon the impugned notification dated 11.10.2006. It is the opinion of this Court that the notification dated 11.10.2006 is in accordance with law. Accordingly, the impugned order dated 10.05.2018 requires no interference.

29. The writ petitions accordingly stand dismissed. No costs.

JUDGE